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Filing date: **08/23/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91224122
Party	Defendant Turner Foods, LLC
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVE W STE 151 VIENNA, VA 22180-5612 UNITED STATES admin@thetrademarkcompany.com, mswyers@thetrademarkcompany.com
Submission	Other Motions/Papers
Filer's Name	Matthew Swyers
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Signature	/Matthew H. Swyers/
Date	08/23/2016
Attachments	Motion to Compel Attendance at Discovery Conference.pdf(323372 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

In the matter of Appl. Serial No. 86/503,214;
For the mark THE PRESERVATION SOCIETY,

Societe des Caves et des Producteurs Reunis de-
Roquefort,

Opposer,

vs.

Turner Foods, LLC,

Applicant.

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Opposition No. 91224122

MOTION TO COMPEL ATTENDANCE AT DISCOVERY CONFERENCE

COMES NOW Applicant, Turner Foods, LLC (hereinafter “Applicant”), by counsel, The Trademark Company, PLLC, and pursuant to §§ 408.01(a) & 523 of the TBMP *et seq.* files the instant motion to compel attendance at discovery conference seeking an order compelling Opposer, Societe des Caves et des Producteurs Reunis de Roquefort (hereinafter “Opposer”), to cooperate in scheduling and attending the Discovery Conference required by §401 of the TBMP *et seq.* In support of the instant motion, Applicant states as follows:

STATEMENT OF THE CASE

1. On September 30, 2015 Opposer filed a Notice of Opposition against Applicant’s U.S. Appl. Serial No. 86/503,214 for the mark THE PRESERVATION SOCIETY (hereinafter “Applicant’s Mark”) for use in connection with the following goods: “Cheese spreads” in Class 29 (hereinafter “Applicant’s Goods”).

2. The original deadline for Applicant to file an Answer to the Notice of Opposition was November 9, 2015.

3. On November 9, 2015 Applicant filed a Motion for an Extension of Time to Answer the Notice of Opposition seeking an Order from Board allowing Applicant until January 8, 2016 to file an Answer.

4. Applicant's Motion for an Extension of Time to Answer the Notice of Opposition filed on November 9, 2015 was granted on January 25, 2016 allowing Applicant until January 8, 2016 to file an Answer.

5. On January 8, 2016 Applicant filed a Motion for an Extension of Time to Answer the Notice of Opposition seeking an Order from Board allowing Applicant until March 8, 2016 to file an Answer.

6. Applicant's Motion for an Extension of Time to Answer the Notice of Opposition filed on January 8, 2016 was granted on February 4, 2016 allowing Applicant until March 8, 2016 to file an Answer.

7. On March 8, 2016 Applicant filed a Motion for an Extension of Time to Answer the Notice of Opposition seeking an Order from Board allowing Applicant until May 7, 2016 to file an Answer.

8. Applicant's Motion for an Extension of Time to Answer the Notice of Opposition filed on March 8, 2016 was granted on April 18, 2016 allowing Applicant until May 7, 2016 to file an Answer.

9. On May 6, 2016 Applicant timely filed an Answer to the Opposer's Notice of Opposition in the instant matter.

10. The deadline for the parties to conduct the Board's mandatory Discovery Conference was June 6, 2016 per the Board's last trial order entered on April 18, 2016.

11. On June 3, 2016 Counsel for Applicant's Office contacted Counsel for Opposer by email to calendar the discovery conference. *See Exhibit A.*

12. Counsel for Opposer did not respond to the aforementioned outgoing June 3, 2016 email.

13. On June 6, 2016 Counsel for Applicant's Office contacted Counsel for Opposer by email to calendar the discovery conference. *See Exhibit B.*

14. Counsel for Opposer did not respond to the aforementioned outgoing June 6, 2016 email.

15. On July 6, 2016 Counsel for Applicant's Office left a message for Counsel for Opposer regarding the scheduling of the discovery conference in the instant case.

16. On July 6, 2016 Counsel for Applicant's Office also contacted Counsel for Opposer by email to calendar the discovery conference. *See* Exhibit C.

17. Counsel for Applicant received the automatic out of office reply email from Counsel for Opposer in response to the aforementioned July 6, 2016 email. *See* Exhibit D.

18. On July 7, 2016 Counsel for Opposer sent the email attached hereto as Exhibit E to Counsel for Applicant stating that it did not expect to receive instructions from its client regarding the discovery conference. *See* Exhibit E.

ARGUMENT

An Applicant in the position of a defendant may appropriately file a motion to compel attendance at the discovery conference when a party refuses to cooperate in scheduling the discovery conference. Pursuant to § 408.01(a) of the TBMP *et seq.* all parties have a duty to cooperate and conduct the discovery conference and if a party refuses the defendant/ Applicant may compel the other party to attend the discovery conference. *See: Promgirl, Inc. v. JPC Co.*, 94 USPQ2d 1759 (TTAB 2009) (sanctions in the form of judgment denied; motion to compel attendance at a discovery conference granted).

WHEREFORE in consideration of the foregoing, pursuant §§ 408.01(a) & 523 of the TBMP *et seq.* Applicant respectfully moves the Board for an Order compelling the Opposer to cooperate in scheduling and attending the Discovery Conference.

Respectfully submitted this 23rd day of August, 2016.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
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Tel. (800) 906-8626
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Opposition No. 91224122

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 23rd day of August, 2016 to be
served, via first class mail, postage prepaid, upon:

DENNIS S PRAHL
LADAS & PARRY LLP
1040 AVENUE OF THE AMERICAS
NEW YORK, NY 10018-3738

/Matthew H. Swyers/
Matthew H. Swyers

Exhibit A

From: Valerie Kuhar [mailto:valeriek@thetrademarkcompany.com]
Sent: Friday, June 03, 2016 3:54 PM
To: 'dprahl@ladas.com'; 'rcathcart@ladas.com'; 'jkwon@ladas.com'; 'rroa@ladas.com'
Subject: Societe des Caves v. Turner Foods, LLC

Dennis,

We note that the Board's deadline for the discovery conference in the above matter is Monday, 6/6. Please let us know if you are available for the call on Monday, 6/6 at 2:30, 3:00 or 3:30 pm (EST).

We look forward to the pleasure of your reply.

Best,

Valerie Kuhar

Litigation Specialist
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Cary, NC 27518
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The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.

Exhibit B

From: Valerie Kuhar [mailto:valeriek@thetrademarkcompany.com]
Sent: Monday, June 06, 2016 7:54 PM
To: DPrahl@ladas.com
Cc: 'rcathcart@ladas.com'; 'jkwon@ladas.com'; 'rroa@ladas.com'
Subject: Reminder: Societe des Caves v. Turner Foods, LLC

Dennis,

We have not received your response to our request to schedule the discovery conference in this matter. We note the board's deadline to hold the same is today.

Please let us know your soonest availability to hold the discovery conference in this case at your earliest convenience.

Thank you.

Best,

Valerie Kuhar

Litigation Specialist
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Exhibit C

From: Valerie Kuhar [mailto:valeriek@thetrademarkcompany.com]
Sent: Wednesday, July 06, 2016 7:17 PM
To: 'dprahl@ladas.com'
Cc: 'rcathcart@ladas.com'; 'rroa@ladas.com'
Subject: Reminder: Societe des Caves v. Turner Foods, LLC
Importance: High

Reminder

Dennis,

Please let us know your availability to schedule the Board's mandatory discovery conference in the above matter as soon as possible. We note the Board's deadline to conduct the discovery conference expired on 6/6/2016.

I left you a voicemail regarding the discovery conference in this case today as well.

We look forward to the pleasure of your reply.

Best,

Valerie Kuhar

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Exhibit D

From: Prah, Dennis [mailto:DPrah@ladas.com]

Sent: Wednesday, July 06, 2016 7:17 PM

To: Valerie Kuhar

Subject: Automatic reply: Reminder: Societe des Caves v. Turner Foods, LLC

Thank you for your email. I am away from the office through Monday, July 11, 2016 with limited access to email. If you require immediate assistance, please contact my partner, Bharati Bakshani, at bbakshani@ladas.com.

Exhibit E

From: Kwon, Jennifer [mailto:JKwon@ladas.com]
Sent: Thursday, July 07, 2016 10:33 AM
To: 'Valerie Kuhar'
Cc: Prah, Dennis; Cathcart, Ralph; Roa, Reinaldo
Subject: RE: Reminder: Societe des Caves v. Turner Foods, LLC

Dear Valerie:

Please be advised that we have not received, and do not expect to receive, instructions from our client regarding the discovery conference.

Kind regards,

Jennifer Kwon
Associate
Ladas & Parry LLP
1040 Avenue of the Americas
New York, NY 10018-3738
T +1 212 708 1865 | F +1 212 974 3352 | jkwon@ladas.com
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